

WEDNESDAY, February 11, 1852.

The Senate was called to order by the President, pursuant to adjournment—prayer by the Rev. Mr. Baggerly—roll called—quorum present.

The journal of yesterday was read and adopted.

Mr. Grimes presented the quarterly report of the Directors of the Penitentiary.

HUNTSVILLE, February 3rd, 1852.

HON. JESSE GRIMES,

DEAR SIR: The report of the Directors of the Penitentiary to the Legislature embraced the expenses up to the 30th Sept., 1851.

The last quarter of the year having closed, I have thought it proper that the Legislature should be apprised of the standing of the institution on the 31st December, 1851, to the end that a special appropriation should be made to meet the outstanding drafts of that date, and leave the general appropriation for two years for the expenses of that time. It is much to be hoped that a sufficient amount be appropriated for the completion of the building—true economy would indicate that course, for when once completed expenses could be much curtailed, and as a fabricating institution, I am confident it would yield a profit. We suggested a division of the duties of the Superintendent—he should neither be the book keeper, salesman, or have to attend to purchases; his duties as Superintendent, when well attended to, will consume all his time, independent of extraneous ones. An officer to attend to those other duties, with a salary of some \$800 per year, would be an improvement of the present law, and ensure correct exhibits and frugality in purchases, and expedite sales. A portion of the appropriation should, from time to time, be placed in the hands of the Superintendent, or the agent of purchase, should the Legislature create such an officer.

On the following page I give you the exhibit above referred to.

Yours truly,

JOHN S. BESSER.

Outstanding and unredeemed drafts per report,	\$2,849 97
Since redeemed here, No's 84, 85 and 87,	95 00
	<hr/>
	\$2,754 79
Since issued up to December 31st, 1851,	2,699 21
	<hr/>

Expenses pr. quartér ending December 31, 1851,

Outstanding,			\$5,454 00
To wit: Carpentershop,	\$25 41	Contra, Cr.	\$125 05
Wagon shop,	232 27	"	192 75
Brick yard,	50 41	"	141 70
Bl'ksmith shop,	165 00	"	157 70
Tailor shop	1 00--	\$474 10	" 40 80—658 00
Rations,	492 33		
Clothing,	261 52		
Superintendent,	250 00		
Directors,	75 00		
Physicians,	33 85		
Guard,	668 00		
Transp't'n c'vts,	656 43		
Miscellaneous,	214 81		
Cash to convict,	10 00--	2,661 94	
		<hr/>	
		\$3,136 04	
Am't paid here,		436 83	
		<hr/>	
Warrants as above,	\$2,699 21		
Receipts as above from various branches,			\$658 00
Expenses " on " "			474 10
			<hr/>
Balance in favor,			\$183 90

In addition, we have a heavy amount of wagon work and materials on hand.

J. S. BESSER, One of the Directors,

And under authority from the others.

Mr. Taylor made the following reports :

AUSTIN, February 11, 1852.

To Hon. J. W. HENDERSON,

*President of the Senate :*

The committee on Private Land Claims have had before them a bill, originating in the House of Representatives, to be entitled an act for the relief of Joel P. Hardin and Peter High, colonists of Mercer's colony, and find that the said Hardin and High emigrated to Mercer's colony in 1844, and that they did reside in said colony for three years previous to the 25th day of October, 1848. In addition, they have each produced a colony certificate from Mercer or his agent.

The committee consider these claimants, in each case, to have fulfilled the objects contemplated in the act for the relief of the citizens of Mercer's colony, to wit: that of their emigration to, and settlers in Mercer's colony, for a term of years previous to

the 25th or October, 1848. They, therefore, recommend the passage of the House bill for the relief of the said Joel P. Hardin and Peter High. All of which is submitted.

M. D. K. TAYLOR, Chairman.

SENATE CHAMBER, Feb'y 11, 1852.

To the Hon. J. W. HENDERSON,

*President of the Senate:*

Your committee on Private Land Claims have examined a bill for the relief of Marcello Granger and Michael Peveto, and find from the facts adduced, that these gentlemen received from the government of Mexico, a headright each, for one league and labor of land, and being entitled, under the laws of the Republic of Texas, to an additional labor, they applied to the proper court, and the court issued to them a certificate for one league and labor, when it should have been but for a labor. The traveling board rejected these certificates, as they had already received certificates for one league. This bill proposes to give them the labor, which, under the law, they were entitled to. From these facts, a majority of the committee have instructed me to report the bill back without amendment, and recommend its passage.

All of which is submitted.

M. D. K. TAYLOR, Chairman.

Mr. Grimes, chairman of the committee on Finance, made the following report:

The Finance committee, to whom was referred a bill relinquishing the title of the State to lots on Galveston Island, in the possession of actual settlers, who purchased under the patent issued to Levi Jones and Edward Hall.

The committee have before them a statement of O. C. Hartley, that the amount of land to which the State would relinquish title under the provisions of this act, would not exceed one hundred and thirteen acres, held by some ten or twelve settlers.

Your committee report the bill for the consideration of the Senate.

Mr. Grimes made the following report:

AUSTIN, February 10, 1852.

The committee on Finance, to whom was referred a bill to be entitled an act granting further time to Adolphus Glavecke, former assessor and collector of Cameron county, under certain conditions. The petition sets forth the manner in which he has become involved and unable to make settlement with the Comptroller. He prays that further time be given him to make payment upon his giving additional security. The only matter for consider-

ation is, the propriety of extending the time for settlement of his accounts, which your committee submit for the consideration of the Senate.

JESSE GRIMES, Chairman.

Mr. Bigelow made the following report :

CITY OF AUSTIN, February 10, 1852.

To the Hon. J. W. HENDERSON,

*President of the Senate :*

The committee on Public Lands have considered a bill to be entitled an act for the relief of Henry J. McKenzie, a colonist of Mercer's colony, and find that Mr. McKenzie emigrated to, and settled in Mercer's colony in February, 1846, where he resided and cultivated land for four successive years, and performed all the duties of a citizen and colonist, and afterward removed from the colony. The law of 1850 only provides for those who were in the colony at the passage of the law, and the Legislature is asked by the bill to give him special relief. In view of all the facts, the committee have unanimously instructed me to report the bill back to the Senate without amendment, and to respectfully recommend its passage. Which is submitted.

ISRAEL B. BIGELOW, Chairman.

CITY OF AUSTIN, February 10, 1852.

To the Hon. J. W. HENDERSON,

*President of the Senate :*

The committee on Public Lands have considered a bill for the relief of the heirs of Stephen Wiley, deceased, and find that Mr. Wiley was a resident of Texas as early as the year 1812, and died in the country in 1826 ; but that he was never attached to any colony, no colony having been established previous to his death. Your committee are of the opinion that the law has never given a right to cases of this character, nor does this case come within any of the provisions of the 10th section of the general provisions of the constitution of the Republic of Texas, and believing it would be purely a gratuity if the bill were to pass, the committee have unanimously instructed me to report the bill back to the Senate and recommend its indefinite postponement. Which is respectfully submitted.

ISRAEL B. BIGELOW, Chairman.

Mr. Hill, chairman of the committee on Public Debt, to whom was referred a bill for the relief of John Blair, reported the same back and recommended its passage.

Mr. Reaves, chairman of the committee on Engrossed Bills, reported the following bills correctly engrossed, to wit :

A bill for the relief of assessors and collectors of taxes ;

A bill for the relief of William E. Howth ;

A bill to quiet the titles to land in and near Burnet's colony ;

And a bill proposing an amendment to the constitution of the State of Texas.

Mr. Duggan introduced a bill to incorporate the San Marcos Bridge company ; read first time, and, on motion of Mr. Duggan, the rule was suspended, bill read second time, and ordered to be engrossed.

On motion of Mr. Duggan, the rule was further suspended, bill read third time and passed.

#### ORDERS OF THE DAY.

A message was received from the House, informing the Senate that the House had passed a bill to establish and incorporate the Gonzales College, originating in the Senate.

Also the following bills originating in the House, to wit :

A bill to incorporate the town of Larissa ; and

A bill for the relief of Elizabeth Jones.

Also, that the House had receded from their 7th and 8th amendments to a bill to create the counties of Cameron, Starr and Webb into separate land districts.

Also, that the House had receded from their 2nd amendment to a bill to incorporate the Texas Western Railroad company.

The Senate receded from their first amendment to a bill to apportion the Senators and Representatives of the Legislature among the several counties of the State, according to the requirements of the constitution, by the following vote :

YEAS—Messrs. Armstrong, Bigelow, Bogart, Davis, Doane, Duggan, Ford, Hart, Hill, Merriman, Reaves, Taylor, Truit, Williams and Wilson—15.

NAYS—Messrs. Dancy, Eddy, Gray, Grimes, Meusebach, Parker, and Scott—7.

A bill to provide for the erection of a Capitol for the State of Texas ; read third time, and passed by the following vote :

YEAS—Messrs. Bigelow, Bogart, Dancy, Davis, Doane, Duggan, Ford, Grimes, Hart, Merriman, Meusebach, Parker, Scott, Sterne, Truit, Williams and Wilson—17.

NAYS—Messrs. Burks, Hill and Taylor—3.

A bill to admit William J. M. Whaley and Webster Flanagan to practice law in the several courts of this State ; read third time and passed.

Mr. Reaves, Chairman of the committee on Engrossed Bills, reported a bill supplementary to an act concerning crimes and punishments, approved March 20, 1848, correctly engrossed.

The following bills were severally read third time and passed, to wit :

A bill for the relief of Jose Louis Chevino, his heirs or assigns ;

A bill concerning the headright claims to land of Elias M. Eubanks and Elias N. Eubanks, of Nacogdoches county ; and

A bill for the relief of the heirs of Elizabeth Porter, deceased.

A message was received from the House, informing the Senate that the House had reconsidered the vote concurring in the amendment of the Senate striking out " Washington " and inserting " Milam," in a bill to apportion the Senators and Representatives of the Legislature among the several counties of the State, &c., and afterwards refused to concur therein.

A bill supplementary to an act concerning crimes and punishments, approved March 20, 1848 ; read third time.

On motion of Mr. Bigelow, the bill was amended by striking out the 15th section.

Mr. Bigelow moved to strike out the 34th section.

Mr. Wilson offered the following as a substitute :

" The judgment of the court upon conviction for adultery shall be " lapides ex baggo extrahunt ; " accepted, and amendment rejected.

Mr. Bigelow offered the following amendment to the 34th section, to come in after the word " each : "

" Shall be liable to a fine not exceeding ten dollars, and imprisonment in the common jail not exceeding ten days ; " rejected.

Mr. Bigelow moved to strike out the 99th section.

The bill then passed by the following vote :

YEAS—Messrs. Armstrong, Bogart, Doane, Duggan, Eddy, Gray, Grimes, Merriman, Meusebach, Parker, Reaves, Scott, Taylor, Williams and Wilson—15.

NAYS—Messrs. Bigelow, Dancy, and Hill—3.

On motion of Mr. Hill, the Senate insisted on their amendment striking out " Washington " and inserting " Milam," in a bill to apportion the Senators and Representatives of the Legislature among the several counties of the State.

Messrs. Wilson, Armstrong and Bogart were appointed a committee of Conference on said bill.

On motion of Mr. Wilson, the Senate adjourned until 3 o'clock p. m.

3 O'CLOCK, P. M.

Senate met—roll called—quorum present.

Mr. Williams introduced a bill supplementary to an act creating the county of Cooke; read first time, and, on motion of Mr. Williams, the rule was suspended, bill read second time, and ordered to be engrossed.

On motion of Mr. Williams, the rule was further suspended, bill read third time and passed.

Mr. Gray made the following report:

FEBRUARY 10, 1852.

The committee on the Judiciary have considered a bill to determine what lands are forfeited, as maturely as the time allowed since its reference would permit, and a portion of the committee report: the bill proposes to carry into effect a clause of the constitution, (art. 13, sec. 4,) which declares that the Legislature shall "provide a method for determining what lands have been forfeited and escheated." A law concerning escheats has been enacted by a former Legislature; but no provision has been made on the subject of forfeitures. The general policy of such a measure, and whether it is wise in a government to enforce its rights in such cases, is not a question now open for discussion, for the direction of the constitution itself is too plain and positive to doubt that some action should be had. What shall be the extent of the action to be taken, and the mode of procedure to be adopted are questions subject to legislative discretion, and present points of difficulty truly embarrassing, whilst the right of the State to inquire into and enforce forfeitures of grants to lands, is imperatively directed by the supreme law of the land, it certainly was not intended, and would be unwise to carry it out with a ruthless hand, forgetful of all other interests and considerations of State policy.

The bill includes in its wide sweep at old titles, all classes of grants of a greater amount of land than one league and labor; alters the law of evidence so as to impose the burden of proof on the grantees of the old title, and instead of giving the benefit of any forfeiture to the State or to bona fide settlers and improvers of her soil, grants away all the interest of the State to all locators, whether speculative or otherwise.

This is going to greater lengths than is deemed expedient or equitable, or than is demanded by good policy. The history of the country, and the legislation on land titles afford ample proof that the clause in the constitution under which this bill is proposed, was mainly designed to apply to the large grants of land made by the State of Coahuila and Texas by sales, and common-

ly known as eleven league grants. Some of these are doubtless fraudulent, and others forfeited by non-performance of the conditions annexed ; and there may be good reason for investigating and forfeiting them ; but the same reason does not apply to larger grants, made to colonists and settlers, as augmentation headrights or special grants for improvements made by them, nor is it reasonable or just that a particular class of titles should be subjected to more onerous and difficult modes of proof than is required for others. The ordinary rules of evidence are ample for all practical purposes, and should not be varied by the Legislature to gratify a prejudice however just, or to accomplish an end desired, however reasonable, when the variation would violate the law of equality among citizens.

The provision giving up the land forfeited to locators, and confirming their claim, is peculiarly objectionable in the form presented by the bill. Speculating locators have no special claim on the liberality of the State, for they stir up litigation and strife for their own advantage, casting doubt and discredit on the titles of the country generally, to its great injury. On the other hand, settlers who have made improvements, whether claiming under the old grant or recent location, by increasing the population and tilling the soil, add to the strength and wealth of the State, and have the strongest claims for her care and protection, and for the exercise of her liberality.

With these general views, briefly and imperfectly stated, the annexed amendments are proposed, and with them the passage of the bill is recommended.

P. W. GRAY.

Mr. Gray, chairman of the committee on the Judiciary, reported back to the Senate a bill for the investigation of eleven league land claims in Robertson's and part of Burnet's colony, and recommended it be laid on the table.

A message was received from the House, informing the Senate that the House had passed a bill to incorporate the Aransas Road company ; and a bill to donate a league of land to the widow and orphans of Major Wm. S. Henry, deceased, which originated in the Senate.

Mr. Duggan made the following report :

The committee on Enrolled Bills have examined the following :

- An act for the relief of James McWilliams ;
- An act for the relief of Sam Bogart ;
- An act for the relief of H. F. Holcomb.
- An act to incorporate the Corpus Christi Navigation company ;
- An act to incorporate the Comal Union School ;



An act supplementary to the act to establish the Galveston and Red River Railway company ; and

An act to incorporate the Texas and Louisiana Railroad company.

All of which are correctly enrolled, and were this day submitted to the Governor for his approval.

A bill for the relief of William E. Howth ; read third time.

Mr. Gray offered the following amendment :

Strike out "second class," and insert "public ;" after "such," insert "class and ;" adopted, and bill passed.

Joint resolution proposing an amendment to the constitution of the State, so as to have annual sessions of the Legislature, not to exceed sixty days ; rejected by the following vote :

YEAS—Messrs. Bigelow, Bogart, Dancy, Doane, Duggan, Ford, Gray, Grimes Kinney, Reaves, Scott, Taylor, Truit, Williams and Wilson—15.

NAYS—Messrs. Armstrong, Burks, Davis, Hart, Hill, Merri-man, Meusebach and Parker—8 ; two-thirds not voting for it.

A bill for the relief of assessors and collectors of taxes ; read third time, and rejected by the following vote :

YEAS—Messrs. Armstrong, Bigelow, Bogart, Burks, Doane, Duggan, Hill, Kinney, Meusebach, Reaves and Wilson—11.

NAYS—Messrs. Dancy, Eddy, Ford, Gray, Grimes, Hart, Merri-man, Parker, Scott, Sterne, Taylor, Truit and Williams—12.

Joint resolution proposing an amendment to the constitution of the State of Texas, so as to strike out the 27th section of the 3rd article ; read third time, and passed by the following vote :

YEAS—Messrs. Bigelow, Bogart, Burks, Dancy, Davis, Duggan, Eddy, Ford, Gray, Hill, Parker, Reaves, Scott, Sterne, Taylor, Truit, Williams and Wilson—18.

NAYS—Messrs. Armstrong, Doane, Grimes Hart, Kinney, Merriman and Meusebach—7.

A bill to authorize Preston Witt and Wade H. Witt, to locate a tract of land embracing a portion of the channel of the west fork of the Trinity river, and to construct and erect a mill thereon, together with the report of the committee on the Judiciary thereon, recommending its indefinite postponement, was read and report adopted.

On motion of Mr. Hill, the vote which passed a bill concerning the archives of the Legislature, was reconsidered.

Mr. Hill offered the following amendment, to come in in the 14th line of 1st section : "as far as the same have not heretofore been recorded ;" adopted.

Mr. Dancy moved to amend by striking out "15 cents," and inserting "10 cents;" lost.

The bill was then passed by the following vote:

**YEAS**—Messrs. Bigelow, Bogart, Davis, Ford, Hill, Meusebach, Parker, Scott, Truit and Wilson—10.

**NAYS**—Messrs. Armstrong, Burks, Dancy, Duggan, Eddy, Grimes, Reaves and Williams—8.

A bill to locate the county seat of Calhoun county; read.

Mr. Duggan offered the following amendment:

"Provided, the county seat shall not be removed from **Lavaca** without a two third-vote of the qualified electors;" adopted.

On motion of Mr. Taylor, the bill was laid on the table.

A message was received from the House, informing the Senate that the House had appointed Messrs. Tarver, Stapp and Fields a committee of Conference on the bill to apportion the Senators and Representatives among the several counties of the State.

A bill to amend the statute of limitations, approved February 5, 1841; read.

Mr. Bigelow moved to strike out everything appertaining to accounts between merchants: lost.

The bill then passed to third reading.

A bill for the relief of Peter Nichols, sheriff of Cameron county; read.

Mr. Armstrong offered the following amendment:

"That the further sum of eighty-seven dollars be allowed and paid to Joab Harrell, sheriff of Williamson county, for taking Hodges, a convict, to the penitentiary, on his presenting the certificate of the Superintendent of the Penitentiary, that he is entitled to that amount;" adopted, and bill ordered to be engrossed.

On motion of Mr. Bigelow, the rule was suspended, bill read third time, and passed by the following vote:

**YEAS**—Messrs. Armstrong, Bigelow, Bogart, Dancy, Doane, Duggan, Eddy, Ford, Gray, Grimes, Hill, Merriman, Meusebach, Parker, Scott, Sterne, Truit and Wilson—18.

**NAYS**—Messrs. Hart and Taylor.

A bill creating a board of trustees for the county of **Bastrop**; read, and passed to third reading.

On motion of Mr. Merriman, the rule was suspended, bill read third time and passed.

On motion, the Senate adjourned until 10 o'clock to-morrow morning.